

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 26, 2013 appellant, then a 50-year-old financial specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 8, 2013 he experienced sharp pains along his right hip, lower back, and upper leg when he was in his hotel room preparing for class at the Aberdeen Proving Grounds (APG) in Maryland. He reported that he asked a hotel employee to call 911 and was transported to the hospital. Appellant stopped work on February 8, 2013 and returned to work on February 12, 2013. On the reverse side of the claim form, the employing establishment noted that it was controverting appellant's claim on the bases of performance of duty and untimely filing.

By letter dated May 16, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he provide evidence to establish the factual elements of his claim and medical evidence to demonstrate that he sustained a diagnosed condition causally related to his employment.

On June 7, 2013 appellant responded to OWCP's development letter. He explained that the February 8, 2013 incident occurred while he was on official travel status taking a defense acquisition course at APG. Appellant noted that the class lasted from 8:00 a.m. to 4:30 p.m. and consisted of listening to lectures and working on projects within the classroom. He related that on the morning of February 8, 2013 he was in the lobby of his hotel when he experienced pain along the right side of his hip and along his back that worsened to the point that he asked the person at the desk to call an ambulance. Appellant noted that he had a small amount of pain during the week, but he thought it would eventually subside. He noted that he was enclosing copies of the emergency room reports and his travel orders.

Appellant was initially examined in the emergency room on February 8, 2013 and submitted hospital records, including a narrative report by Dr. Rajagppala Tripuraneni, Board-certified in emergency medicine. Dr. Tripuraneni related appellant's complaints of pain in the right side of the back, mostly in the right hip for the last 10 days. He reviewed appellant's history and conducted an examination. Dr. Tripuraneni noted no tenderness of the back, but observed hip pain on motion. Upon examination of the lower extremities, he reported no calf tenderness, no edema, and normal equal pulses. Dr. Tripuraneni noted that diagnostic reports were obtained and diagnosed degenerative disc disease, especially at L3-4.

Appellant submitted various diagnostic reports dated February 8, 2013 by Dr. Richard Mones, a Board-certified diagnostic radiologist. Dr. Mones observed spondylosis, especially at the left side of L3-4 and moderate narrowing of the L3-4 disc space. He diagnosed degenerative disc disease, especially at L3-4. Examination of the right hip revealed small sclerosis in the right femoral head and intact bony pelvis. Dr. Mones diagnosed unremarkable SI and hip joints.

A February 8, 2013 computerized tomography (CT) scan of the abdomen and pelvis by Dr. Brian J. Brune, a Board-certified diagnostic radiologist who specialized in vascular and interventional radiology, revealed minimal bibasilar atelectatic change within the lower lobes, and no evidence of hydronephrosis of either kidney.

In a decision dated June 20, 2013, OWCP denied appellant's traumatic injury claim finding that he had not established fact of injury. It determined that the evidence of record was insufficient to establish that the February 8, 2013 incident occurred as alleged or to establish that he sustained a diagnosed condition causally related to the alleged incident.

On October 10, 2013 OWCP received appellant's reconsideration request. Appellant stated that he arrived in Maryland on Sunday and drove approximately 1.5 hours to APG. He explained that he was in class Monday to Thursday roughly from 7:30 a.m. to 5:00 p.m. Appellant related that on Monday afternoon he began to experience small pains in his lower right back. The pain worsened each day, but he hoped it would go away when he got home. Appellant reported that on Friday his back was painful, but because the class was only for half a day he thought it would be okay until he went home that evening. He packed his belongings and prepared for the day. Appellant noted that he was in a lot of pain and could not bend down to tie his shoes. He went to the lobby because he thought walking around would help. Appellant related that he was standing at a table eating when suddenly he experienced sharp pains in the lower right side of his back. He walked over to a hotel employee and asked her to call an ambulance because he was in a great deal of pain. Appellant was examined in the emergency room and prescribed pain medication. He noted that he was enclosing hospital records and two letters from his primary care physician.

Appellant submitted a signed request and authorization form for tour of duty (TDY) travel to the APG in Maryland on February 3, 2013 and hospital records dated February 8, 2013.

In a July 31, 2013 report, Dr. John J. Sullivan, a Board-certified internist and pediatrician, related that on February 8, 2013 appellant experienced severe pain in his right hip and was taken to the emergency room where he was diagnosed with low back strain. He noted that he examined appellant on February 14, 2013 and observed no tenderness to percussion of his back and light tenderness to the abdomen. Dr. Sullivan also observed full range of motion of the hips. Straight leg raise testing was 90 degrees bilaterally. Dr. Sullivan diagnosed right inguinal pain and benign essential hypertension. He related that on March 14, 2013 he examined appellant again and provided his examination findings. Dr. Sullivan noted that a CT scan of the abdomen showed bilateral, fat-filled small inguinal hernias. He explained that the history suggested a lumbar radiculopathy, but he did not expect that to cause inguinal tenderness. Dr. Sullivan opined that appellant suffered this injury when he was carrying or moving luggage during his visit to APG, Maryland for work.

Dr. Sullivan also provided a September 4, 2013 report where he opined that he thought that lifting or moving luggage was most likely the cause of appellant's injury, but that it could have occurred when appellant was walking. He explained that, in the absence of a definite instant when the injury occurred, it was speculation on anyone's part about how the injury occurred. Dr. Sullivan doubted that the injury would have occurred if appellant had remained home and not traveled to Maryland.

On November 7, 2013 OWCP received the employing establishment's controversion letter. Chris D. Plummer, an injury compensation specialist, controverted appellant's claim on the bases of untimely filing, performance of duty, and causal relationship. He asserted that appellant failed to file the traumatic injury form within 30 days of the incident. Mr. Plummer

also noted that the medical reports were insufficient to establish that appellant's diagnosed condition was causally related to the injury event. He further alleged that the injury did not occur in the performance of duty because appellant indicated on his claim form that the incident occurred one hour prior to his regular work schedule. Mr. Plummer also noted that appellant had a preexisting condition and noted that he had provided an e-mail from appellant's supervisor regarding appellant's preexisting condition.

In a November 6, 2013 e-mail, Kathy McCorkle, a supervisor, stated that appellant had a preexisting back problem and was not injured while on TDY status. She believed that he had a serious flare-up, which required him to visit his doctor.

By decision dated March 5, 2014, OWCP denied modification of the June 20, 2013 decision finding that the evidence failed to establish fact of injury. It noted that the evidence of record did not establish a mechanism of injury.

On March 3, 2015 OWCP received appellant's reconsideration request. Appellant resubmitted the February 8, 2013 hospital records and diagnostic reports.

In a decision dated March 31, 2015, OWCP denied further merit review of appellant's case. It determined that the evidence submitted was repetitive of evidence previously submitted.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>2</sup> OWCP regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must also be received within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant

---

<sup>2</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>3</sup> 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>4</sup> *Id.* at § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a).

reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; has not advanced a relevant legal argument not previously considered by OWCP; and has not submitted relevant and pertinent new evidence not previously considered by OWCP.

Appellant alleged that on February 8, 2013 he experienced lower back and right hip pain while on TDY status at the APG in Maryland. OWCP denied his traumatic injury claim as he had not established fact of injury. It found that appellant had not provided a sufficient description of how the February 8, 2013 incident occurred and did not provide medical evidence to establish that he sustained a diagnosed condition causally related to the alleged incident.

On March 3, 2015 OWCP received appellant's request for reconsideration. Appellant resubmitted hospital records and diagnostic reports dated February 8, 2013. The Board finds that this evidence is insufficient to review his case on the merits because these reports were previously considered by OWCP. The Board has found that submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>8</sup> For this reason, appellant did not submit sufficient evidence to warrant further merit review.

On appeal, appellant contends that he sustained an injury while attending a required training course at the APG in Maryland and argued the merits of his case. As previously noted, however, the Board does not have jurisdiction over the merits of his claim and can only address the issue of whether OWCP properly denied merit review of appellant's case.

Appellant did not submit any evidence along with his request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Because he did not meet any of the necessary requirements, he is not entitled to further merit review. Accordingly, the Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that OWCP properly declined to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

---

<sup>6</sup> *Id.* at § 10.608(b); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board